

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
NEWARK VICINAGE

CARSON E. LUBIN,	:	
	:	
Petitioner,	:	Civil Action No. 16-76(SRC)
	:	
v.	:	<u>OPINION</u>
	:	
CHARLES GREEN,	:	
	:	
Respondent.	:	

CHESLER, District Judge

This matter comes before the Court upon Petitioner Carson E. Lubin's ("Petitioner") Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241. (Pet., ECF No. 1.) Petitioner has been in detention pursuant to 8 U.S.C. § 1226(c) (detention of a criminal alien pending removal proceedings) since May 30, 2013. (Id.) Respondent filed a letter response asserting that Respondent does not object to the Court entering an order remanding this matter to the Immigration Court for a bond hearing under 8 C.F.R. § 1003.19(c). (Letter Response, ECF No. 3.)

In reply, Petitioner asserts that he never received a bond hearing, but the Immigration Judge erred by alleging Petitioner was a danger to the community. (Traverse to Resp't Opp. to Writ of Habeas Corpus ("Traverse"), ECF No. 5.) Petitioner appears to be

referring to the Immigration Court's denial of his application for asylum on May 5, 2016. (Id. at 1-2.) Petitioner requests that this Court conduct the individualized bond hearing and order his release. (Id. at 2-3.)

Petitioner is entitled to a bond hearing pursuant to Chavez-Alvarez v. Warden York County Prison, 783 F.3d 469, 478 (3d Cir. 2015) (holding that the Due Process Clause limits the Government's authority to detain an alien under 8 U.S.C. § 1226(c) without a bond hearing because, as the length of detention grows, the burden on the alien's liberty outweighs any justification for detention without consideration of bond.) The appropriate relief is to order a bond hearing before an Immigration Judge. See Chavez-Alvarez, 783 F.3d at 477 n. 12 ("[w]e read 8 C.F.R. § 1003.19(c) as giving the Immigration Judge jurisdiction to rule on the bond issue"); see Reeves v. Johnson, Civ. Action No. 15-1962(SRC), 2015 WL 1383942, at *3 (D.N.J. Mar. 24, 2015) (citing Pisciotta v. Ashcroft, 311 F. Supp. 2d 445, 454 (D.N.J. Jan. 9, 2004) (district court does not have jurisdiction over discretionary agency decisions such as whether to release a petitioner on bond.)) An appropriate Order follows.

DATED: July 8, 2016

s/ Stanley R. Chesler
STANLEY R. CHESLER
United States District Judge